

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6178

IN THE MATTER OF:

Served April 9, 2001

Application of MOBILE CARE)
SPECIALTY TRANSPORTATION, INC.,)
Trading as MOBILE CARE, to Acquire)
Assets from IRONSIDES TRANSPORT,)
INC., WMATC No. 31, to Acquire)
Assets and Certificate No. 65 from)
MOBILE CARE, LTD., and for)
Temporary Approval)

Case No. AP-2001-10

Application of IRONSIDES TRANSPORT,)
INC., for Voluntary Termination of)
Certificate No. 31)

Case No. AP-2001-30

On December 18, 2000, Ironsides Transport, Inc., informed the Commission that it had entered into an agreement to sell its assets, including vans and a customer list, to Mobile Care, Ltd., WMATC Carrier No. 65, and had decided to surrender Certificate of Authority No. 31. On December 27, 2000, Mobile Care, Ltd., filed a lease agreement permitting Mobile Care, Ltd., to operate Ironsides' vans.

On January 25, 2001, an affiliate of Mobile Care, Ltd. -- Mobile Care Specialty Transportation, Inc., a Maryland corporation trading as Mobile Care (transferee) -- filed an application for Commission approval to purchase Ironsides' customer list and vans and for approval to acquire Certificate No. 65 from Mobile Care, Ltd., together with substantially all of Mobile Care, Ltd.'s assets. The application further requests temporary approval of Mobile Care, Ltd.'s, use of Ironsides' customer list until such time as Certificate No. 65 is reissued in Mobile Care Specialty's name.

The application was accepted for filing on February 6, 2001. Notice of the application was published by the Commission in Order No. 6119 on February 12, 2001, and by applicant in a newspaper of general circulation in the Metropolitan District on February 23, 2001. The application is unopposed.

I. PERMANENT TRANSFER TO MOBILE CARE SPECIALTY

Under Article XI, Section 11(a), and Article XII, Section 3(a)(ii), of the Compact, the Commission may approve the transfer of assets from a WMATC carrier to another carrier that operates in the Metropolitan District, including a WMATC certificate of authority, if the Commission finds the transfer to be in the public interest. The public interest analysis focuses on the Mobile Care Specialty's fitness, the resulting competitive balance and the interests of affected employees.¹

¹ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC Code Ann. § 1-2414 (1999)); In re Cavalier

A. Fitness

Mobile Care Specialty proposes operating six vans. Mobile Care Specialty's proposed tariff includes rates for Medicaid transportation and rates for non-Medicaid transportation.

Mobile Care Specialty's balance sheet, as of January 3, 2001, shows assets of \$115,700; liabilities of \$61,500; and equity of \$54,200. Mobile Care Specialty's projected operating statement for the first twelve months of WMATC operations shows WMATC revenue of \$320,000; other revenue of \$100,000; expenses of \$402,900; and net income of \$17,100.

Mobile Care Specialty certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder.

Based on this evidence, and subject to the condition that Mobile Care Specialty furnish proof that its vehicles have passed a safety inspection within the past twelve months, the Commission finds Mobile Care Specialty to be fit, willing, and able to perform the proposed transportation properly and conform with applicable regulatory requirements.

B. Competition

The primary concern when assessing the effect of a transfer on competition is whether the transfer will increase the transferee's market share -- or the market share of a person controlling the transferee.² Transactions which do not increase market share give little cause for concern.³ The Commission will approve even those transactions which tend to increase market share as long as there is sufficient intermodal and/or intramodal competition to check any anticompetitive effects that such transactions otherwise might produce.⁴

The transfer of assets and Certificate No. 65 from Mobile Care, Ltd., to Mobile Care Specialty does not create any competition concerns. A transfer of assets from one member of a controlled family to another does not in and of itself increase the controlling party's market share.⁵

The transfer of assets from Ironsides to Mobile Care Specialty causes little concern, as well. Mobile Care Specialty proposes to operate six vans in the market for Medicaid and related non-Medicaid transportation -- a market currently served by some one hundred WMATC carriers.

Transp. Co., Inc., t/a Tourtime America, Ltd. & Tourtime America Motorcoach, Ltd., No. AP-96-21, Order No. 4926 (Sept. 12, 1996).

² In re MDR Transporting Serv., Inc., & Roop Transp. Servs., Inc., No. AP-00-09, Order No. 5840 (Mar. 14, 2000); In re Coach One, Inc., t/a Exec. Coach, No. AP-98-06, Order No. 5295 (Mar. 19, 1998).

³ Order No. 4926.

⁴ Order No. 4926.

⁵ Order No. 5840; Order No. 5295.

We find that the combined transfer of assets and operating authority from Mobile Care, Ltd., to Mobile Care Specialty and assets from Ironsides to Mobile Care Specialty will create no adverse effect on competition.

C. Employees

The application states that Mobile Care Specialty will hire all employees of Ironsides and Mobile Care, Ltd., who wish to be hired.

We find that the combined transfer of assets and operating authority from Mobile Care, Ltd., to Mobile Care Specialty and assets from Ironsides to Mobile Care Specialty will create no adverse effect on employees.

D. Conclusion

We find that the combined transfer of assets and operating authority from Mobile Care, Ltd., to Mobile Care Specialty and assets from Ironsides to Mobile Care Specialty is consistent with the public interest.

II. TEMPORARY TRANSFER TO MOBILE CARE, LTD.

The Commission may grant temporary approval under Article XII, Section 3(d), without a hearing or other proceeding up to a maximum of 180 consecutive days if the Commission determines that grant to be consistent with the public interest. The public interest analysis under Section 3(d) includes an assessment of whether denial of temporary approval would cause a diminution in the value or utility of the subject assets.⁶

The application requests temporary approval of Mobile Care, Ltd.'s, use of Ironsides' customer list until such time as Certificate No. 65 is reissued in Mobile Care Specialty's name. The application indicates that the business value associated with the list will diminish if temporary approval is denied. The Commission has acknowledged the value of customer lists in the past and has granted temporary approval where, as here, the transferor no longer controls any vehicles and the transferee has sufficient WMATC authority to service the customers on the list.⁷

We find that denial of temporary approval would cause a diminution in the value of the Ironsides customer list and shall allow Mobile Care, Ltd., to use the list until such time as Certificate No. 65 is reissued in Mobile Care Specialty's name, but not for more than 180 days.

III. TERMINATION OF CERTIFICATE NO. 31

The Commission may terminate a certificate of authority under Title II of the Compact, Article XI, Section 10(b), upon application by the holder.

⁶ In re Regency Servs., Inc., & Carey Limo. D.C., Inc., No. AP-95-39, Order No. 4689 (Nov. 2, 1995).

⁷ See Order No. 4689 (granting temporary approval).

We construe Ironsides' declaration of intent to surrender its certificate of authority as an application for voluntary termination. The application shall be granted.

THEREFORE, IT IS ORDERED:

1. That upon transferee's timely compliance with the requirements of this order, Certificate of Authority No. 65 shall be reissued to Mobile Care Specialty Transportation, Inc., trading as Mobile Care, 4823 Fairmont Avenue, Suite D, Bethesda, MD 20814.

2. That transferee may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate of Authority No. 65 has been reissued in accordance with the preceding paragraph.

3. That transferee is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the vehicle registration card, and a lease as required by Commission Regulation No. 62 if transferee is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

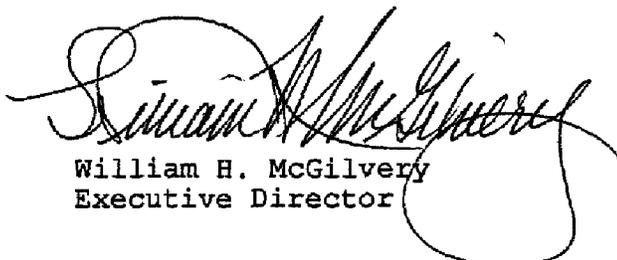
4. That the approval of transfer herein shall be void and the application shall stand denied upon transferee's failure to timely satisfy the conditions of reissuance prescribed herein.

5. That Mobile Care, Ltd., is hereby granted temporary approval to operate the assets of Ironsides Transport, Inc., until such time as Certificate No. 65 is reissued in Mobile Care Specialty's name, but not for more than 180 days.

6. That Certificate of Authority No. 31 is hereby terminated, effective this date.

7. That within thirty days from the date of this order Ironsides Transport, Inc., shall surrender Certificate No. 31 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:


William H. McGilvery
Executive Director